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ADMIRALTY.

*Nature and enforcement of Decrees in.*

Decrees in the Admiralty can only be enforced in the Courts of the United States, in the mode and by the process properly ordained by Acts of Congress and Rules of Court for their execution. Ward *vs.* Chamberlain, - - - - - - - - - - 171

The character and effect of such Decrees in Admiralty, and their modes of execution, are within the province of Congress to determine. *Ib.*

Under the existing Acts of Congress and Rules of Court, the libellant in Admiralty may have an attachment or a *capias* against the person of the defendant, or a *fieri facias* against his goods and chattels; and these are the only writs and the only mode prescribed, whereby an Admiralty decree can be lawfully executed in the Circuit and District Courts. *Ib.*

The Court of Admiralty has no power to issue an execution against the lands of a defendant, to collect the amount due on a decree in Admiralty for the payment of money. *Ib.*

The Supreme Court of the United State has power to regulate the practice of the Courts of Admiralty, and to frame rules in relation to executions and other process to be used therein. *Ib.*

An Admiralty decree is not a lien on land, and has never been treated as a lien on Land in either England or this country. *Ib.*

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The Legislature of a State has the right, in the absence of any constitutional provisions to the contrary, to prescribe any formalities in the conveyance of personal property which it may deem expedient, and to make such provisions universal in their application to all who hold property in the State, as well those residing without as within the State's territory. Hanford *vs.* Paine, - - - - - - - - 533

Personal property is generally regarded as having no *situs;* its title, mode of transfer, and all incidents connected with its transmission are regulated by the law of the owner's domicil. *Ib.*

A voluntary assignment for the benefit of creditors, if made in accordance with the law of the assignor's domicil, is effective to pass the personal property of such assignor wherever situated, unless restrained by some local law. *Ib.*

ASSUMPSIT.

I. *Where lies.*

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A canal, through a marsh in which a stream is lost, cut by private individuals through the land of one of them, for the purpose of affording floatage for timber and lumber through the same in connection with the stream—there being no evidence that the waters of the stream ever ran along its line, or that it was the improvement of an existing water channel—is a *private* way, and the public are not entitled to use it, unless it be dedicated to their use. *Ib.*

The owner of the land on which such canal was dug, and who appeared to have incurred the major part of the expense of making it, gave notice to other individuals, who had contributed to its repair, that they must compensate him for its use at a rate which he specified in his notice; and on their refusal, and continuing its use under a claim of right to do so, brought action in assumpsit to recover compensation for the use. *Held,* that the action could not be maintained. *Ib.*

The law will not imply a promise to make compensation for the use of the canal before the notice was given, and while it was permitted by the plaintiff without objection, and without demand of compensation. *Ib.*

Nor will the law imply such a promise after the notice, since any implication of a promise is precluded by the denial by defendants of all right to compensation, and the assertion of an adverse right in themselves. The

adverse entry, if the claim of right is unfounded, is a naked trespass, upon which no duty to compensate arises which can be converted into a contract. *Ib.*

II. *For money had and received.*

See BANKS and BANKING, II.

ATTACHMENT.

*Liability of Sheriff for goods.*

When the sheriff, who attaches a vessel and allows her to go into the hands of third parties, who use her, and finally sell her, both the sheriff and such third parties will be treated as trustees for all the parties interested in the property, and in case the attaching creditor procures a judgment in the attachment suit, he may compel the sheriff and the parties having the earnings and proceeds of the vessel, to account for the same, and have them applied to the payment of his judgment. Norton *vs.* Hixon, - - - - - - - - - 311

A Court of Chancery has jurisdiction in such case, although the earnings and proceeds might have been reached by a garnishee, it furnishing a much safer and more efficient remedy, and the funds being treated as trust funds. *Ib.*

ATTORNEY.

*Right to costs.*

A settlement privately effected between the parties with the design of preventing the attorney in the cause from obtaining his costs, will not be recognized by the Court; but the attorney, on application to the Court, will be allowed to go on and collect the costs in the action, that he may thereby secure himself. Rasquin *vs.* The Knickerbocker Stage Company, 696

BAILMENT.

*Gratuitous—liability.*

The unauthorized delivery of a thing bailed, by the mandatory to a stranger, will make the mandatory responsible for the loss, on the ground of the violation of his trust. Colyar *vs.* Taylor, - - - - - 428

Such unauthorized delivery of the property by the mandatory to a third person may be treated as a conversion by the bailor. *Ib.*

Where A, the bailor, entrusted a sum of money to B, the bailee, who gratuitously undertook to carry it for A, and then handed it over to C, a third person, without the knowledge or assent of A, C undertaking the bailment, also without reward, and, while engaged in such duty, lost the money by having his pocket picked, it was held that B was liable to A. *Ib*

A bailee without hire is responsible for gross negligence. "Gross negligence" defined. *Ib.*

See also—

CARRIER.

INNKEEPER.

TOWAGE OF VESSELS.

BANK CHECK.

The holder of a bank check marked "good," stands on the footing of an ordinary depositor, and no right of action exists, and the statute of limitations does not begin to run until a demand has been made by the holder upon the bank for payment. The Girard Bank *vs.* The Bank of Penn Township, - - - - - - - - - - - - - - - 620

A check was drawn on the 7th of October, 1852, and probably certified when it was drawn. It was not presented for payment until September 3, 1859, nearly seven years from the date of the deposit. On the 10th of

October, 1854, the bank paid the money to the original depositor, taking his bond of indemnity against the certified check. *Ib.*

*Held:* that the plaintiff was not barred of his action against the bank by such delay in making the demand for payment, and that the taking of the bond of indemnity was a distinct acknowledgment that the money then remained on deposit to the credit of the holder of the certified check. *Ib.*

BANKS AND BANKING.

I. *Liability of Shareholders.*

Each stockholder in a bank in this State (Maine) is liable to make good losses sustained by the pecuniary inability of the directors, by whose mismanagement the bank has sustained a loss, to an amount *not exceeding the amount of his stock at the time.* Wiswell *vs.* Starr, - - - 439

Each stockholder is also liable, at the expiration of the charter, for the redemption of *all unpaid bills*, in proportion to the stock he then holds. The sum to be contributed by each will be in proportion to the whole number of shares actually held at the expiration of the charter, whether such holders are within or without the jurisdiction of the Court. *Ib.*

If the whole number of shares necessary to make up the capital stock named in the charter, does not appear on the books, or otherwise to be held by any persons, the liability will be apportioned according to the number of shares actually held, and not upon the whole capital named in the charter. *Ib.*

When one of the receivers named in the bill is also a stockholder, the bill cannot be sustained, as the same person cannot be both a complainant and respondent, but the bill may be amended, on motion. *Ib.*

II. *Fraud of Officers.*

A, a broker, drew a check on the Merchants Bank, where he had no funds, and by fraudently conspiring with B, the bank's paying teller, caused the check to be marked "good;" and thereupon A, the broker, took it to C, a teller in the Atlantic Bank, who cashed it, and the funds were then placed in the hands of B, in order to make B's account good while undergoing an examination by the bank's officers: the purpose for which the money was to be used being known to all three of the parties, but unknown to the officers of either bank, and it being intended to be returned the next day after the examination; but before the check was returned and a settlement made between the banks, B's fraud was discovered, and he committed suicide: *it was held*, that the Atlantic Bank, whose money was taken without authority and without consideration, and by a fraud, and went directly into the funds of the Merchant's Bank by a conspiracy of the tellers, could maintain an action of assumpsit for money had and received. Atlantic Bank *vs.* Merchants Bank, - - - - 241

The transfer of a sum of money from one party to another, in order to be a payment of a debt, must be so intended by both parties. *Ib.*

III. *Dissolution.*

The charter of a bank expires, in Maine, within the meaning of the statute of that State, when an injunction is made perpetual. Wiswell *vs.* Starr, - - - - - - - - - 439

IV. *Compulsory Assignments.*

The 27th section of the General Banking Law of Pennsylvania of 16th April, 1850, is technically a penal statute, and is to be strictly construed. Commonwealth *vs.* Bank of Commerce, - - - - 379

To authorize the Court or a Judge to decree an assignment by the directors of a bank, under the 27th section of the Act of 16th April, 1850, it must appear that the financial officer of the bank not only refused to pay its notes or certificates in gold or silver, on demand, but that he also

wilfully refused to endorse on them the day and year when they were presented for payment, or refused to give a certificate for money deposited in the bank. *Ib.*

V. *Liability to Depositor.*

See BANK CHECKS.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

I. *What such.*

An instrument by which the makers promise to pay, to the order of the payees, at a time and a place named, a specific sum of money, *with current exchange on New York*, is a negotiable promissory note.—CAMPBELL, J., *dissenting*. Smith *vs.* Kendall, - - - - - - 754

II. *Where discharged by insolvent laws.*

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BRIDGE COMPANY.

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CARRIER.

I. *Waiver of lien for freight.*

A consignment was to D. B. or his assigns, "he or they paying the freight for the said coal;" to which was added in the margin of the bill of lading—"freight payable to P. D. Thomas." Through the failure of the assigns of D. B. the freight was lost. The consignee stood ready to pay it on delivery, and would have paid it to the master, but for the said order of the owner of the vessel, who was not present to receive the amount on the delivery of the cargo. Thomas *vs.* Snyder, - - - 698

*Held*, that in an action for the freight by the owner of the ship against the shipper of the cargo, it was not error for the court to instruct the jury that, if they found the above facts, their verdict would be for the defendant. *Ib.*

II. *Liability for negligence.*

Where a common carrier of merchandise received from a consignor a box, and received therefor a bill of lading in which the name of the consignee alone appeared, and the box, upon tender to the consignee, was refused, and was subsequently stored by the carrier with a regular warehouseman, from whom it was stolen: *Held*, that this did not constitute negligence on the part of the carrier, and that he was not liable for the loss. Williams *vs.* Holland, - - - - - - 701

See also TOWAGE OF VESSELS.

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See BANK CHECK.

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COPYRIGHT.

A party, asserting her literary proprietorship of an unprinted comedy, under an assignment to her by its author, complained of its theatrical representation by the defendants, without her consent. It had been composed in England for performance at a London theatre. Difficulties of adaptation preventing its performance there, it was thrown back on the hands of the author. He, subsequently, not being a citizen, or a resident of the United States, for a valuable consideration transferred his proprietorship of it for the United States to the complainant, a resident of New York, where she was the proprietor and manager of a theatre. She adopted measures for securing a copyright, and, in so doing, performed all such acts prescribed by statutes of the United States as were performable without a publication in print. The play, under her management, was adapted to representation at her theatre, with the assistance of an actor of her company, to whom the principal character was allotted; and, in the course of this adaptation, received written additions, underwent curtailment, and was otherwise altered. The additions were made or suggested by this actor. The play, as composed in England, or as thus altered, was never printed. As altered and adapted, it was publicly represented at the complainant's theatre. Here, the same actor, in performing the principal character, introduced, with a view to stage effect, some unwritten additions, relying for the repetition of them upon his memory alone. The representation at the complainant's theatre having been successful, the defendants, proprietors and managers of a theatre at Philadelphia, afterwards performed the play, against her will, at their theatre, imitating closely the general and particular performance of it, as it had been represented by her. They had witnessed its performance at her theatre; but this, whatever assistance it may have afforded them, was not

the means of enabling them to represent it themselves. They obtained the contents of the English manuscript from a former copy, which had been unauthorizedly retained, or made by a player at the London theatre, for which it had been composed. The additions, written and unwritten, were, without the permission of the complainant, communicated to them by the same actor who had, under her management, introduced them at her theatre. Keene *vs.* Wheatly and Clarke. - - - - 33

As the author was a non-resident alien, the complainant, though herself a resident of the United States, could not, as proprietor of the play, sustain her suit upon the statutes of the United States for the protection of authors and their assigns. *Ib.*

But, independently of this legislation, the court, having, through the citizenship of the parties, a general equitable jurisdiction in the case, the suit was sustained. *Ib.*

The foreign author's assignment, if to be deemed a partial one, was, *at law*, inoperative, except as a license; but, having been for a valuable consideration, was, *in equity*, valid, as an assignment, for the United States, of such literary property as could exist in his composition. *Ib.*

The play never having been published in print, the complainant, as its literary proprietor, could have sustained her suit if she had not herself represented it theatrically before an indiscriminate audience. *Ib.*

A publication, literary or dramatic, may be limited or general. It is general, whenever the communication affecting it is not restricted, both as to the persons to whom, and the purpose for which, it is made. When general, it is a dedication to the public for such unlimited uses, including all modes of publishing and republishing, as it may be the means of directly, or secondarily enabling any person to make. The complainants prior performance of the play at her own theatre was a general publication. Therefore, if it had been the means of directly or secondarily enabling the defendants to represent it through a retention of its words in their own memory, or in that of others of her audience, her literary proprietorship could not have been so asserted as to enable her to maintain her suit. *Ib.*

But the literary proprietorship of an author and his assigns continues after a general publication, except so far as it may be the means of enabling others to make ulterior publication, or otherwise to use the composition published. Therefore, as the complainant's prior public performance of the play was not the means through which the defendants were enabled to represent it, her suit was maintainable on the foundation of literary property, notwithstanding such prior performance. *Ib.*

The written additions to the former manuscript were not independent literary productions, but *accessions*, whose proprietorship was incidental to that of the principl composition. *Ib.*

Had this been otherwise, their literary proprietorship would have been in the complainant, and not in the actor who conceived and suggested them when he was in her service, assisting her in adapting the drama to its intended first performance. His relation to her, as his employer, precluded him from acquiring, under such circumstances, an independent interest of his own in such products of his mental exertion in her service. *Ib.*

His *unwritten* additions were not capable of being the subjects of literary proprietorship in any body. But, independently of any question of proprietary right, the complainant, having the advantage of her priority in the performance of this play, and being engaged in a professional competition in which the retention of this advantage would have been profitable to her, his communication to her professional rivals and competitors of the written, as well as unwritten, additions, was a breach of confidence on his part, from which a Court of Equity would not permit the defendants to derive an advantage to her prejudice, or to retain an advantage thus derived. *Ib.*

The additions, written and unwritten, and the incidental curtailments and alterations, having been the means by which the play, as a whole, was adapted successfully to dramatic representation, this equitable doctrine was, independently of any question of literary proprietorship, applicable to the whole play as acted by the complainant, and imitated by the defendants, including the former composition to which the additions were adapted, so far as it was retained. *Ib.*

CORPORATION.

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BANKS AND BANKING.

COSTS.

See ATTORNEY.

COURTS OF UNITED STATES.

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DEBTOR AND CREDITOR.

See ASSIGNMENTS FOR CREDITORS.

DEED.

*Instrument executed in blank.*

A sealed instrument creating an obligation, executed in blank, cannot be filled up by the person to whom it may be addressed in that condition so as to become operative against the party executing it, even if advances have been made upon the faith of it; and no parole authority to fill up such blanks could aid its validity, unless such authority had been exercised before delivery, and without the knowledge of the party to whom it was delivered. Chauncey *vs.* Arnold, - - - - - - 608

An examination of the English and American cases relating to sealed instruments executed in blank, or altered after delivery. *Ib.*

A general power of attorney to transfer bank stock, as collateral security for a debt, executed with a blank for the name of the transferee, is made specific by the attorney inserting a particular name—and he cannot afterwards erase that name and insert another, and transfer the stock to the name last inserted. Denny *vs.* Lyon, - - - - 626

The practice of executing powers of attorney and other instruments under seal, with blanks to be filled up afterwards, commented on and disapproved, and their general validity doubted. *Ib.*

DESCENT AND DISTRIBUTION.

Under the Indiana statute of Distributions, the word "natural" is to be understood and interpreted as meaning legitimate. Barns *vs.* Allen, - 747

Under that statute the adoption of an heir confers upon him the right of inheritance in the same manner as if he were a legitimate heir. *Ib.*

Where a wife has received from her husband, during his life-time, certain real estate not in lieu of a provision by will or of dower, but absolutely, such gift is not to be regarded in the light of an advancement either at the common law or under the Indiana statute. *Ib.*

DEVISE.

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*How far governs transfers of personalty.*

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DOWER.

It is an inflexible rule, that before the widow can be entitled to dower, the husband must have been seized, either in fact or law, of an estate of inheritance in the land during coverture. Durando *vs.* Durando, - - 630

Hence, a simple reversion in fee, or a vested remainder expectant on an estate for life, held or enjoyed by the husband, cannot create an estate of which the widow is dowable. *Ib.*

The meaning of the word "purchase," and the senses in which it is used in the law of realty. *Ib.*

ENLISTMENTS.

See INFANT.

EQUITY.

I. *In aid of execution at law.*

A Court of Equity will grant discovery and general relief in a case where a plain, adequate, and complete remedy cannot be had at law: hence; when an execution had been issued, and no property found on which to levy, a judgment creditor may file his bill for relief, and is entitled to the aid of the Court to discover and apply the debtor's property to the payment of the judgment. Ward *vs.* Chamberlain, - - - 171

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See PLEADING AND PRACTICE.

ESTATE TAIL.

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II. *How barred.*

To bar an estate tail by a common recovery, it is necessary that the tenant to the præcipe should, either at the time the writ issued, or before judgment given, have an estate of freehold in possession, either by right or by wrong, in the lands demanded by the writ. Richman *vs.* Lippincott, 369

A tenant in tail, by deed of bargain and sale, with covenants of warranty and further assurance, conveyed to two, giving at the same time a bond in a penal sum, conditioned to be void if he should suffer a common recovery of the lands conveyed. The grantees divided between them the lands, and one of them conveyed to a third person. After the conveyance by one of the grantees, the tenant in tail executed a deed tripartite with B, as the tenant to the præcipe, and C, as the recoverer, reciting that the lands had been reconveyed to him by *his grantees;* a recovery was then suffered, and, after judgment, he, who was the tenant in tail, reconveyed to his former *grantees* in fee simple—held, there was no such outstanding estate in *the grantee* of the *grantees* from the tenant in tail, as to render it necessary that his estate should have been surrendered to enable the tenant in tail to constitute a good tenant to the præcipe. *Ib.*

The deed from the tenant in tail to his grantees was merely a deed to lead the uses; the recovery was in pursuance of it, and it would, therefore, seem that there was no surrender necessary from the grantees of the tenant in tail. *Ib.*

After a lapse of more than forty years, the recital in the deed creating the tenant to the præcipe, of possession by one of the grantees of the tenant in tail, who reconveyed for the purpose of obtaining a common recovery, is sufficient to raise the presumption of a surrender by the *grantee* of him, so alleged to have been in possession, and therefore to enable the tenant in tail to make a good tenant to the præcipe. *Ib.*

EVIDENCE.

*Practice in taking depositions.*

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EXECUTION.

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The provision of the Pennsylvania Stay Law of May 21, 1861, directing the court to order that no execution shall issue against a defendant except at the periods when and in the proportions which it shall appear, by a report of the prothonotary, that the majority of his creditors whose demands exceed two-thirds of his or their indebtedness, have agreed to extend the time of payment of the debts due them respectively, is a violation of the Constitution of the United States and of the State of Pennsylvania. Miller *vs.* Ripka, - - - - - - - - 561

II. *Stay laws, waiver of.*

A stipulation in a contract that the property of the debtor shall be sold without appraisement, in the event of non-payment at maturity, is a pact which ought not to be recognized by a court in the decree rendered upon such contract. Levicks *vs.* Walker, - - - - - - 112

III. *In Admiralty.*

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FEDERAL COURTS.

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FRAUD.

*Acquisition of rights through fraud of third person.*

If the owners of property have intrusted it to an agent for a special purpose, and the agent, in violation of his duty, has unlawfully consigned the same to be sold, with directions to remit the proceeds to a private creditor of his own, and such creditor upon being informed, by a letter from the consignee, of the consignment of the property and directions in reference to the same, manifests his assent thereto by unequivocal acts, and the property is sold by the consignee, and bills of exchange, payable to the agent's creditor or his order, are purchased with the proceeds, and remitted in a letter addressed to him, in compliance with the directions, and the creditor, after receiving notice of the intended remittance, and after manifesting his assent thereto, and after the remittance is actually made, but before it is received, learns, for the first time, of the manner in which the agent became possessed of the property, and of his wrongful acts in reference to it, the original owners of the property cannot maintain an action for money had and received against such creditor, to recover the amount collected by him upon the bills of exchange. Le Breton and another *vs.* Peirce. - - - - - - - - 737

And see BANKS AND BANKING, II.

HABEAS CORPUS.

I. *Power to suspend.*

By the English Constitution, Parliament alone has power to suspend the writ of *habeas corpus*. Per TANEY, Chief Justice. Ex parte John Merryman. 524

By the Constitution of the United States, Congress only has power to suspend the writ of *habeas corpus*, and such power does not reside in the President. *Ib.*

The Fourteenth Section of the Judiciary Act of 1789, relating to the constitutional privilege of the writ of *habeas corpus*, discussed and interpreted. *Ib.*

The history of the *habeas corpus* act in England and in the United States. *Ib.*

II. *Jurisdiction to issue.*

A United States District Judge, or a United States District Court, has jurisdiction to issue the writ of *habeas corpus*, and hear the case when the petitioner is held under illegal restraint, without any formal or technical commitment. The matter of Emmet McDonald, - - - - 661

The writ of *habeas corpus* may issue from a Federal Judge whenever the applicant is illegally restrained of his liberty, under or by color of the authority of the United States, and such case is exclusively within the jurisdiction of the Federal tribunals. *Ib.*

The question of jurisdiction is to be determined by the Acts of Congress and the decisions of the Supreme Court, the Circuit Courts, and the District Courts of the United States, thereupon. *Ib.*

The construction and interpretation of the Acts of Congress of September 24, 1789, Sect. 14; of March 2, 1833, Sect. 7. *Ib.*

The history of the *habeas corpus*, under the Judiciary Acts and the Force Bill, as drawn from the adjudicated cases, given and explained. *Ib.*

The adjudicated cases on the *habeas corpus* in the Supreme Court, in the Circuit Courts, and in the District Courts of the United States, cited, and commented on. *Ib.*

HUSBAND AND WIFE.

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INFANT.

*Enlistment of.*

Under the Act of Congress relating to the Military Establishment of the United States, the enlistment of a minor, without the consent of his parent or guardian, is void, and he can be discharged by the State authorities upon writ of *habeas corpus*. Matter of W. H. Dobbs, a minor, - - 565

*Phelan's Case*, 9 Abbott, 286, dissented from. *Ib.*

INNKEEPERS.

An innkeeper can set up no excuse for the loss of his guest's baggage, except the act of God, the act of public enemies, or the guest's own negligence. Cheesbrough *vs.* Taylor, - - - - - - 435

Where the guest at a hotel delivered his baggage to an express agent, who delivered it at the hotel, and the delivery at the hotel was admitted by the innkeeper, and the guest subsequently left the hotel under the belief that his baggage was accompanying him, but it subsequently turned out that one trunk did not leave with him, and the guest, intending to return in a few days, made, at that time, no inquiry about the lost trunk, and did not return for five or six weeks, and then, for the first time, demanded his trunk, and made known to the innkeeper its loss, who made diligent efforts to recover it by advertisement and inquiry; *held*, that this was not such negligence on the part of the guest as to excuse the liability of the innkeeper in his capacity as such. *Ib.*

INSOLVENT.

*Exterritorial operation of insolvent laws.*

State insolvent laws have no force beyond the limits of the State, except such as may be given them by comity. But where a contract was made between parties resident in a State, in the shape of a promissory note, on which a judgment was obtained in the same State by the endorsees against the maker, which judgment was sued on in the United States Court for another State by the same plaintiffs, who are citizens of the last-mentioned State, and a judgment was rendered thereon, and afterwards the defendant was discharged, under the insolvent laws of the State of the contract, the discharge may be pleaded in bar of an action upon the last judgment. Davidson *vs.* Smith, - - - - - 217

A discharge of a debtor under the insolvent laws of Massachusetts, will not bar an action in the courts of Maine, instituted by a citizen of Maine against such debtor who resides in Massachusetts, although the contract was made, and, by its terms, to be performed in Massachusetts. Felch vs. Bugbee, - - - - - - - - - - 104

The endorsement of a negotiable note is a new contract between the parties; and where such note was made in Massachusetts, by a citizen of that State, and payable to another citizen of such State, "at any bank in Boston," and by him endorsed to a citizen of Maine, before maturity and before proceedings in insolvency, the rights of such endorsee are not affected by a discharge of the maker in Massachusetts, under the insolvent laws of that State. *Ib.*

It is citizenship, and not place of making or of performance, that determines the legal rights of the parties. *Ib.*

An assignment of such debtor's property by the officers of the law of Massachusetts, under the provisions of the insolvency act, will not operate upon debts or property in this State, so as to defeat the attachment of a creditor who is a citizen of Maine, made subsequently to such assignment. *Ib.*

INSURANCE.

I. *Open or running policy—validity.*

A policy which is upon a specified kind of goods, to be brought in a certain kind of ships, within a stated time, with a rate of premium fixed, leaving nothing but the quantity and value of the goods to be declared and endorsed on the policy, as the invoices are received, is a valid, open policy, and might embrace goods that were lost and known to be lost before they were endorsed on the policy. Hartshorn et al. *vs.* Shoe and Leather Dealers' Insurance Company, - - - - - 184

But where a policy was under-written "for whom it may concern, to be insured lost or not lost, fifteen thousand dollars on property on board vessel or vessels, steamboat or steamboats, or land carriage, at and from ports or places, to ports or places; all sums at risk under this policy to be endorsed hereupon and valued at the sum endorsed: premium, such per cent. as shall be written against each endorsement;" and certain goods were lost by peril of the sea, while on board the steamer Palmetto, from Philadelphia to Boston, previous to the 23d of March, 1858, no application being made to the insurers until the 24th of March, 1858, to have the same endorsed on the policy, at which time it was publicly known that the steamer Palmetto was lost, and the endorsement was then refused upon the ground that the vessel was so lost, and was publicly known to be so, it was held that the insurer had never assumed the risk, and was therefore not liable to the assured, because, 1st, the policy was an insurance on property, and was wholly wanting in any description of the kind of property which is to be the subject of the risk; 2d, because no ports are named from or to which it is to be transported; 3d, because there is no limitation to a particular kind of vessels, but the language extends to goods transported by steamboats, sailing vessels, and land carriage; 4th, because no time is named within which the policy is to be limited; and, 5th, because no rate of premium is ascertained and fixed by the policy. *Ib.*

Where matters material to the consummation of a contract are to be adjusted and agreed between the parties before an endorsement can be made on the policy, the risk does not attach until such adjustment is perfected. *Ib.*

What is necessary to constitute a valid open or running policy. *Ib.*

II. *Abandonment—Memorandum articles.*

A mere notice of abandonment, without actual abandonment, amounts to nothing. Winter *vs.* Delaware Mutual Safety Insurance Company, 304

If the facts do not justify an abandonment, it is not binding upon the underwriters or the assured. *Ib.*

If the ship be prevented by a peril within the policy from proceeding on her voyage, and be irreparably injured, and the voyage be thereby lost, it is a total loss of ship, freight, and cargo, provided no other ship can be procured to carry on the cargo. *Ib.*

The right to abandon does not always depend upon the amount of the sea damage to a cargo, but upon the facts of the case, and they are for a jury. *Ib.*

The propriety of a sale of a cargo, at a port of distress, is dependent upon the facts, and they are for a jury to determine. *Ib.*

If an abandonment is complete, the subsequent acts of the master cannot deprive the assured of the benefits resulting from it. He is thenceforth the agent of the underwriters, and bound to use diligence, skill, and care towards the interest of all concerned. *Ib.*

Whenever a cargo may, on account of the injuries from perils insured against, be abandoned as for a total loss, memorandum articles stand upon the same footing as others. *Ib.*

The provision in a policy for ascertaining a loss by a separation of the damaged from the undamaged articles applies only to cases of partial, not to a total loss, constructive or absolute. *Ib.*

LIEN OF DECREE.

See ADMIRALTY.

LIMITATION OF ACTIONS.

I. *In respect to real estate.*

The act of limitations of New Jersey, limiting the right of entry on lands to twenty years, provides, that in case of certain disabilities, the time during which the person who shall have the right of entry, shall be under any such disability, shall not be taken or computed as part of said period of twenty years. *Held,* that when the statute has once begun to run, it will continue to run over all subsequent disabilities. Den d. Roberts *vs.* Moore, - - - - - - - - - - 25

The ruling of the Supreme Court of New Jersey, in *Den d. Clark* vs. *Richards,* (3 Green, 347,) approved. *Ib.*

A refusal by one tenant in common to let his co-tenant come in or participate in the enjoyment of the common property, is equivalent to turning him out, and constitutes an adverse possession. *Ib.*

The possession of lands by an agent or manager, is an *actual* possession, within the meaning of the *thirty years* act of New Jersey, and constitutes an adverse possession as against a co-tenant. *Ib.*

II. *In respect to checks and bank deposits.*

See BANK CHECK.

MANDAMUS.

*To compel payment of tax.*

It is a well-established principle of the common law that the writ of mandamus is a remedy to compel any person, corporation, public functionary, or tribunal, to perform some duty required by law, where the party seeking relief has no other legal remedy, and the duty sought to be conferred is clear. Commissioners of Knox County *vs.* Aspinwall, - 347

The Circuit Court of the United States has authority, under the Judiciary Act, to issue a mandamus to compel County Commissioners to levy a special tax, provided by Act of Assembly, to pay the interest on the county's coupon bonds, issued under authority of law. *Ib.*

MARITIME LAW.

I. *Seaman's wages.*

To entitle seamen to double wages, under the act of Congress, July, 1790, chapter 29th, section 9, on account of being put on short allowance of provisions, both the conditions mentioned in the act must concur, the vessel must have *left her last port* with a less amount of provisions than is required by the act, and the crew *must have actually been put on short allowance during the voyage.* The John L. Dimmick, - - - - 224

The statute is, in its nature, a penal law, and is not to be enlarged by construction beyond the natural and obvious meaning of its terms. *Ib.*

To bring a case within the statute, the short allowance must be during the passage of the vessel, and before she arrived at her port of destination. *Ib.*

When the crew is put on short allowance without necessity, in a case not within the act of Congress, there is a wrong in breach of contract, and a remedy will be given by a Court of Admiralty, in the form of additional wages. *Ib.*

It is a well-understood term of contract, that the crew, during the period of their service, shall be furnished with provisions by the owners, sufficient in amount, and of a suitable quality; and to refuse such a supply, without necessity, is as much a breach of the contract as to refuse payment of their wages, though this obligation is not expressed in the written or printed contract. *Ib.*

When the ship was lying in the bay of Mobile four months, waiting for cargo, and the usual supply of provisions from the ship's store were withheld, the crew being required to furnish themselves, by taking oysters from the oyster-beds, when the state of the weather permitted it to be done, and the supply being insufficient in quantity, they were held to be entitled to two months' additional wages. *Ib.*

The daily allowance to seamen, in the merchant service, ought to be equivalent to the navy ration. *Ib.*

The general rule of the maritime law is, that the ship is liable, in specie, for all the obligations of the master, whether arising *ex contractu* or *ex delicto*, resulting from acts done in the exercise and within the proper scope of his authority as master. *Ib.*

II. *Sale by master.*

See INSURANCE.

MILITARY LAW.

See INFANTS.

MUNICIPAL CORPORATION.

I. *Subscription by, where valid.*

An Act of a State Legislature, authorizing a city to issue its bonds in aid of railroad companies incorporated and organized, does not extend to companies afterwards incorporated. Smith *vs.* The Milwaukee and Superior Railroad Company, - - - - - - - - 655

Where a city issues its bonds in aid of a railroad company without authority of law, and receives therefor the bonds of the company, secured with other bonds by a mortgage upon its road, the city is not such a lien creditor for a valuable consideration as to entitle it to claim a share of the proceeds of the sale of the mortgaged premises made in ratification of the mortgage. But the city having received securities collateral to the company's bonds, a judgment creditor of the company cannot, by bill in equity, require the city to surrender these securities until its rights are determined by judicial proceeding, or it be released. *Ib.*

A law of Pennsylvania, declaring that "the city corporations of Pittsburg and Allegheny are authorized to subscribe to the Ohio and Pennsyl-

vania Railroad Company, each, not exceeding $200,000, * * * * * and to vote at elections in the same manner as individual stockholders," and, also, that "the certificate of loan heretofore issued, or which shall hereafter be issued by them, in payment for any subscription to the Ohio and Pennsylvania Railroad Company, are exempted from taxation," &c., justified the issue of the bonds by the city of Allegheny for $200,000 by her Councils, with coupons attached, for her first subscription, and said bonds and coupons are valid. Amey *vs.* Allegheny City, - - - 338

A law of Pennsylvania, declaring that "the city of Allegheny is authorized to increase its subscription to the Ohio and Pennsylvania Railroad Company to an amount not exceeding its first subscription, upon the terms, &c., prescribed to said subscription: provided, no bonds for the payment of stock subscribed as aforesaid be issued less than $100," &c., justified the Councils of Allegheny in issuing bonds, with coupons, for her second subscription to said road of $200,000, and the said bonds and coupons are valid. *Ib.*

The law of Pennsylvania of 8th May, 1850, declaring that "it shall not be lawful for the Councils of Allegheny, directly or indirectly, or by bonds, certificates of loan, or indebtedness, or by any contract, or other means or device, to increase the indebtedness of said city in a sum, which, added to the existing debt, shall together exceed $500,000, exclusive of the subscription of $200,000 to the Ohio and Pennsylvania Railroad," was not intended to apply as a prohibition to the Legislature, in the exercise of its power to authorize the city to incur a debt beyond $500,000, but only to the *Councils* to restrict their *general* power to incur debts to the sum of $500,000. *Ib.*

The eighth section of the charter of Allegheny City, declaring "that so many of them (the laws, ordinances, &c., in the seventh section) as shall not be published in one public newspaper, &c., within fifteen days after their passage," &c., and recorded in the office of Recorder of Deeds, within thirty days, &c., * * * shall be null and void," does not apply to the ordinance authorizing the subscription and issue of bonds under the laws above mentioned, and the ordinance was not null and void for want of such recording. *Ib.*

The question, under the Constitution of Pennsylvania, whether the Legislature could give authority to the city of Allegheny to subscribe, &c., has been definitely and repeatedly settled by the inferior courts as well as by the Supreme Court of Pennsylvania, and this court will not discuss it. *Ib.*

II. *Power of U. S. Courts to enforce subscription.*

See MANDAMUS.

NEGLIGENCE.

See BAILMENT.

NEW ENGLAND PROTECTIVE UNION.

See PARTNERSHIP.

PARTNERSHIP.

I. *How created.*

A and B were two accredited agents of the New England Protective Union—A for the making of purchases, and B for the selling of produce. By the rules of the association, all purchases were required to be for cash, and not on credit; and this rule was known to both plaintiffs and defendants. A purchased from C, the defendant, goods to the value of $9,000 on credit, but without the knowledge of B. *Held,* That no partnership existed between A and B, by which the latter could be compelled to pay the debts incurred by the former, for the purchase of goods on credit, without B's knowledge, in violation of the express terms of the partner-

ship, known to the plaintiffs, and in the absence of any fraud or deception practiced upon them. Chapman & Co. *vs.* Devereux & Noyes, - - 419

Where no credit is given, and no expectation, originally, of looking to one partner for debts incurred by the other, no recovery against the former can be had. *Ib.*

Where C, the plaintiff, trusted A, one of the defendants, who were partners, in violation of the rule of the partnership, which C ought to have, or might have known by inquiry, and in the absence of any deception, he cannot look to B, the other partner, for payment of his debt, because such debt was contracted without the scope of the partnership, and upon the individual liability of A. *Ib.*

Partnership defined to be a joint interest in the net profits of an adventure or business, or in the profits as affected by the losses. *Ib.*

II. *Rights of creditors in Equity—partnership real estate.*

In equity, the creditors of an insolvent co-partnership have a right to the payment of their claims out of the partnership property, superior to the right of creditors of an individual member. All the members of a co-partnership have a joint interest in its property, while the interest of each, as a separate member, is his share of the surplus remaining after the payment of the partnership debts. Charles Crooker, in Equity, *vs.* Wm. D. Crooker, et als., - - - - - - - - 539

And the implied trust or pledge, which each member of the partnership has, that its property shall be applied to the payment of its debts, extends, as well to the real estate which has been purchased for partnership uses, with the funds of the partnership, as to stocks, chattels, or debts; notwithstanding the real estate may have been conveyed by such a deed as, under our statutes, would, *at law*, make the partners tenants in common. *Ib.*

And where the creditors of one of the members of a co-partnership had instituted suits at law against him, and attached his *legal* interest in real estate thus conveyed, intending to levy thereon to satisfy their judgments, when rendered, the Court, in the exercise of its chancery powers, will interpose to protect the rights of the other partners, when the estate attached will be required to pay the debts of the firm, (including the firm's liabilities to its individual members,) and, if without it, the partnership will be insolvent. *Ib.*

PAYMENT.

See BANKS AND BANKING, II.

PLEADING AND PRACTICE IN EQUITY.

I. *Amendments to pleadings.*

In equity, an amendment of the bill, when allowed after answer and replication, does not open the pleadings unrestrictedly. The Court looks back through them in order to ascertain to what extent, if any, the amendment may have introduced a new case, or new matter; and, in general, considers them as open to this extent, but no farther. Keene *vs.* Wheatley & Clarke, - - - - - - - - - - 33

An amendment of the bill, after answer, does not sanction the introduction on the part of the defendant, by way of plea, of an allegation of a personal disability in the complainant as having existed at the commencement of the suit. The answer itself would overrule such a plea. *Ib.*

II. *Evidence, practice in taking.*

By the act of Congress and the rules of practice of the circuit courts of the United States, in equity, a party has a right to have witnesses within the jurisdiction of the court examined in open court; or he may have a commission issued with written interrogatories annexed for the examina-

tion of such witnesses, unless the interrogatories be waived by the opposite party, when the examination is had as a deposition, but the commission may be dispensed with by consent. Bronson *vs.* La Crosse and Milwaukee Railroad Company, - - - - - - - 350

In States where there is no law regulating the taking of depositions of witnesses within the jurisdiction, the act of 1802 does not apply; and one party cannot require the other party to attend the taking of the depositions of such witnesses before a master unless in cases specially provided for in the act of September, 1789. *Ib.*

POST OFFICE.

*Legality of private letter carriage.*

The Acts of Congress of 2d March, 1827, sect. 3, forbidding all persons, other than the Postmaster-General, or his agents, from setting up any foot or horse *post* for the conveyance of letters, &c., upon any *post-road* then or thereafter established; and of 3d March, 1845, section 9, forbidding the establishment of any private *express* for the conveyance of letters, &c., from a city, town, or place, to another city, town, or place, between which the mail is regularly transported, prohibit the business of private letter carriers on *mail routes*, but not that of private letter carriers *within* the limits of a post-town. United States *vs.* Kochersperger, - - 145

In the Act of 3d March, 1851, section 10, authorizing the Postmaster-General "to establish post-routes *within* the cities or towns" whose postmasters are appointed by the President, the word *post-routers* is not synonymous with *post-roads* in the Act of 1827. *Ib.*

The Postmaster-General having, conformably to the provisions of the Act of 1851, and other statutes, established *within* the postal district of a city whose postmaster was appointed by the President, a local post for the collection and delivery of letters, &c., not carried by mail, issued an order declaring that, under the authority conferred by the Act of 1851, the streets of the city were established as *post-roads*. This order did not make them *post-roads* within the meaning of the Act of 1827, or make the business of private letter carriers within the postal district of the city, unlawful. *Ib.*

If a passenger in a railroad car or steamboat, passing over a post-road, carry letters, without the knowledge or consent of the proprietor of such car or boat, or any of his servants, the owner does not incur the penalty prescribed by the nineteenth section of the act of Congress of the 3d of March, 1825. United States *vs.* James W. Hall, - - - - 232

If the owner of the car or steamboat be not liable under the nineteenth section of the act, no penalty is incurred by the person who sends such letters, under the twenty-fourth section. *Ib.*

But if a person be openly engaged in the business of private letter carrying over the post roads of the United States, and a railroad company be notified by public advertisement, and by the agent of the post-office department, that the party and his agents are engaged in such business, they will be liable to the penalty prescribed by the nineteenth section, for conveying such agents carrying letters. *Ib.*

And the company being liable under this section, the person employing such agents in the transportation of letters over a post-road, becomes liable under the twenty-fourth section. *Ib.*

POWER OF ATTORNEY.

*In Blank.*

See DEED.

PRESIDENT OF THE UNITED STATES.

*Power to suspend Habeas Corpus.*

See HABEAS CORPUS.

PRESUMPTION.

*Of regularity of Common Records.*

See ESTATE TAIL II.

PROMISSORY NOTE.

See BILL OF EXCHANGE.

PROTECTIVE UNION.

See PARTNERSHIP I.

SALE.

See TREASURE TROVE.

SEAMEN.

See MARITIME LAW.

SHERIFF.

*Liability of.*

See ATTACHMENT.

SHIPS AND SHIPPING.

See MARITIME LAW.

STAY LAWS.

See EXECUTION. I. II.

SUBSCRIPTIONS.

*By cities, boroughs, &c.*

See MUNICIPAL CORPORATIONS.

SUNDAY LAWS.

The Christian religion, as the acknowledged religion of the people by consent and usage of the community, is entitled to respect and protection from the law, although it be not the legal religion of the State established by law. Lindenmuller *vs.* The People, - - - - - 591

Christianity is a part of the common law of England, and the common law of England, subject to Legislative or Constitutional alteration, is, and ever has been, a part of the law of this country. *Ib.*

As a civil and political institution, the establishment and regulation of the Sabbath is within the just powers of the civil government *Ib.*

Hence, when the Legislature enacted a statute whereby Sunday theatres and theatrical entertainments on the Sabbath are declared nuisances, and an indictment was duly found and prosecuted against the lessee of such a theatre, it was held to be within the constitutional power of the Legislature to enact such a statute, and that it did not interfere with religious belief, worship, faith, or practice. *Ib.*

SURETY.

*Discharge of by acts of creditor.*

Where collateral security had been pledged by a mother for the debt of her son, which debt was a note drawn by the son and endorsed by another, who was part owner of a steamboat with the son, and in a suit between the creditor and the mother in regard to the collateral, the creditor released the endorser to make him a witness; held, that the release of the endorser released the collateral security for the debt. Denny *vs.* Lyon, - 626

TAXES.

I. *On Corporation created by different States.*

By virtue of the joint legislation of the States of Pennsylvania and New Jersey, a bridge was erected by an incorporated company across the Delaware river at Trenton, where the river is navigable and the tide rises. The corporate meetings of the said Bridge Company, its principal office, and the great majority of its stockholders and directors had always been and still continue to be within the exclusive jurisdiction of New Jersey. Under the Tax Acts of Pennsylvania, imposing taxes on the capital of "an institution or company incorporated under any law of the Commonwealth," it was held: first, that the said bridge was an institution or company incorporated under the laws of Pennsylvania; second, that inasmuch as only one-half the company's property was within the jurisdiction of Pennsylvania, that one-half of its capital stock alone could be there taxed. Pennsylvania *vs.* Trenton Bridge Company, - - - - 298

II. *Power of United States Courts to compel assessment of.*

See MANDAMUS.

TENANT IN COMMON.

See LIMITATION OF ACTIONS, I.

TOWAGE OF VESSELS.

A person engaged in the business of towing boats is liable for damages arising from the negligence of his agent, who has charge of the towing vessels, where the parties have not agreed to the contrary. Ashmore *vs.* Pennsylvania Steam Towing and Transportation Company, - - 721

The agent of a towing company made an agreement with the master of a canal boat to tow the boat from Bordentown to Schuylkill, and back again, at the risk of the master and owner, the master agreeing to keep a competent man at the helm of his boat at all times while the tow was in motion, and guaranteeing that the boat should be seaworthy and reasonably fit for the trip. *Held*, that, under this agreement, if the boat to be towed was seaworthy, the only risks that the towing company were exempt from were the risks incidental to ordinary careful navigation, and they were not exempt from liability for damages caused by the negligence or unskilfulness of their agents or servants: *held, also*, that an action for *tort* was the proper remedy, the contract being set out in the declaration as matter of inducement. *Ib.*

The failure of the master and owner of the canal boat to perform the stipulations of the agreement do not affect the liability of the party towing the boat, unless such failure to perform contributed to the accident. *Ib.*

A common carrier may make a contract limiting or lessening his responsibility, but ought not to be permitted to make a contract that will exempt him from liability for damages occasioned by his own or his servants' negligence or misconduct.—Per VAN DYKE, J. *Ib.*

Whether persons engaged in towing boats are considered common carriers, and should be held responsible, as such, for the boat towed and its cargo?—*Query*. *Ib.*

TREASURE TROVE.

A block of wood was sold at an administrator's sale, without the knowledge of either purchaser or seller that it contained, as was afterwards discovered, moneys, notes, and other valuables, to a large amount. *Held*, that no title to the treasure passed to the purchaser. Hutmacher *vs.* The Administrators of Harris, - - - - - - - 410

TROVER.

See TREASURE TROVE.

BAILMENT.

TRUSTS AND TRUSTEES.

*Where legal estate passes.*

When a cestui que trust is sui juris, and invested with the entire beneficial interest, the use is executed, in Pennsylvania, and he takes a legal estate corresponding with the beneficial estate in quantity, irrespective of a testator's intention; although the trustees are directed to invest in real estate, to keep insured, and to receive the rents and pay to cestui que trust. In England such duties would require that the legal seisin should remain in the trustees. Kay *vs.* Scates. - - - - - 285

A trust is not to be sustained, in Pennsylvania, because it is for the sole and separate use of a feme sole, who was unmarried when the will took effect, and there being, at that time, no marriage in immediate contemplation. *Ib.*

A trust is special, and will not be considered executed until the time at which the full beneficial enjoyment of the interest devised shall vest, which may be postponed until after the cestui que trust attains majority. *Ib.*

Although in Rush *vs.* Lewis, and Kuhn *vs.* Newman, the court refused to decree a conveyance from the nominal trustee, yet when the nominal trust beclouds the title and embarrasses the rights of alienation, a conveyance will be decreed in accordance with the practice of Courts of Chancery. *Ib.*

WATER COURSE.

*Artificial, construction of.*

See ASSUMPSIT.

WAY.

*What private.*

See ASSUMPSIT.

WILLS.

I. *What estate passes by.*

The words of a will were, "I give and bequeath to my daughter, Elizabeth Bones, the use and life estate, in her own proper person, (but without power to convey the same to any other person for any period or term,) all my messuage, tenement, etc., and at the decease of my said daughter, Elizabeth, the said lot or tract of land I hereby bequeath to such of her children or their heirs as may survive her, as tenants in common; that is, the child or children of any deceased child of her's shall hold the same interest and right that the decased parent would have held if living." *Held*, that under the terms of the will, Elizabeth Bones took only an estate for life. Guthrie's Appeal, - - - - - - - - 354

The cases of M'Kee *vs.* M'Kinley, 9 Casey, 89; Williams *vs.* Leech, 4 Casey, 89; and Naglee's Appeal, 9 Casey, 89, questioned. *Ib.*

The word "issue," in a will, is a word of limitation, which may, however, by words of distribution among the issue, and by words of superadded limitation, give rise to a presumption of a different intention in the testator. Kay *vs.* Scates, - - - - - - 285

The words "die without issue," "in default of issue," "for want of issue," "on failure of issue," or "die without leaving issue," import an indefinite failure of issue, from which, after a devise to one for life, an estate tail will be implied. *Ib.*

II. *Trusts under.*

See TRUSTS AND TRUSTEES.

WORDS.

*Construction of.*

"Issue," "dying without issue."

See Kay *vs.* Scates, - - - - 285

"Purchase."

See Durando *vs.* Durando, - - - - - 630

"Natural."

See Barns *vs.* Allen, - - - - - - 747